83 - 1529
No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

FREDERICA ANN ROBINSON,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

ON APPEAL FROM THE COURT OF SPECIAL APPEALS OF MARYLAND

SUPPLEMENTAL APPENDIX

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A-1
A-2

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 90

September Term, 1983

FREDRICA ANN ROBINSON

V.

STATE OF MARYLAND

Gilbert, C. J.
Adkins,
Morton, James C., Jr.
(Ret., Specially
Assigned)

JJ.

Per Curiam

Filed: October 26, 1983

Opinion Page 7 (formerly A-2)

C. Limitation of Cross-Examination

Robinson contends that in numerous instances her cross-examination of

witness Kittel was improperly curtailed. Before discussing the specifics of her claims, we pause a moment to review the current state of the law on this subject.

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Cross-examination is no doubt an important weapon in the lawyer's arsenal, because it assists in the basic objective of the judicial fact-finding process - to come as close to the truth as may be. See Davis v. Alaska, 415 U. S. 308 (1974). We have stressed the broad scope of this right, and the restrictions on judicial discretion to control it, in such recent cases as Reese v. State, 54 Md. App. 281 (1983);Cox v. State, 51 Md. App. 271 (1982), cert. granted 293 Md. 726 (1982), and Fletcher v. State, 50 Md. App. 349 (1981). But as we even more

recently observed in Smith v. State, ____ Md. App. ___, slip op. at 4 (No. 189, Sept. Term, 1983, filed Oct. 13, 1983): "Despite the narrow limits of judicial discretion in this context, it nevertheless does exist."

In Smith we held that questions on cross-examination were properly excluded when they were without proper form, unduly broad, argumentative, and possibly designed to humiliate or harass the witness. Another factor a judge may consider in deciding whether to allow specific cross-examination is whether exclusion of the evidence sought is likely to prejudice the party seeking it. Fletcher v. State supra, 50 Md. App. at 256-57. And in balancing the interests involved, it is appropriate to weigh the "waste of judicial time factor ... against the value of exploration...."

Reese v. State, supra, 54 Md. App. at 289-90. That is, the importance of cross-examination does not necessarily permit a party unlimited scope to replough ground that he has already cultivated abundantly.

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Bearing these principles in mind, we turn to Robinson's several contentions.

1. Superficiality of Kittel's Investigation

At one point during the trial, Kittel was being cross-examined about the effect flame-retardant treatment had on fabrics. He admitted that some fabrics were treated with fire retardants, and that "the degree of fire retardant in the material would have an effect on how long it might take that material to ignite and start burning...." He then admitted that he

had not had material from the sofa (where he opined the fire had started) analyzed to see whether it had been treated with flame-retardants. He explained that "it's very, very rare that you ever find it [flame-retardant material] in a household sofa because of the expense involved in treating these things." In answer to another question about the lack of analysis he said: "There are commercial laboratories thatdo this type of work [analysis] but my experience has been that they charge a fee and we are told there are no funds for that kind of stuff so I have never sent anything like that away simply because we have no facility for it."

The next question was: "So the reason you may not know what type of flame-retardant was on the sofa was because for whatever reason you didn't

feel that you could spend the money to do the analysis."

To this question an objection was sustained, and we think correctly. While Robinson now says that the question was [Opinion Page 10 (formerly A-5)] directed at exposing the superficiality of Kittel's investigation of the sofa fabric, the question itself was argumentative, and assumed a fact not in evidence (that there was some type of flame-retardant on the sofa). Most importantly, Kittel had already said that for several reasons, including lack of funds, he had not submitted the sofa fabric for analysis. If that tended to show a superficial investigation, it was already in evidence. The trial judge did not abuse his discretion in sustaining the objection.

2. Prevention of Investigation of the Fire by Others

The defense apparently wanted to show that Kittel had prevented investigation of the fire by anyone but himself. Specifically, Robinson now claims that an insurance adjuster, Wayne Berger, was prevented from conducting an investigation. Kittel could not remember whether Berger was present on the night of the fire, but agreed he "would not be surprised...if Mr. Berger would tell you that he tried to get in to make his own investigation [that night] that you wouldn't let him." Kittel was then asked: "So in effect, yours is the only investigation of this incident which was possible because you prevented other ones?" Again, an objection was sustained and again, we conclude, correctly.

The question incorrectly assumed the existence of evidence that Kittel had prevented all investigations of the fire, not just Berger's. Kittel had already testified that it was his practice to ask firefighters to keep people away from the scene [Opinion Page 11 (formerly A-6)] during and immediately following a fire, but this is not tantamount to a general prohibition of investigations. In point of fact, Berger testified that the restrictions on his investigation applied only on the night of the fire. The next day, he was permitted full access to the premises.

3. Habits of Arsonists

During cross-examination Kittel testified that there were many reaons for arson, such as pyromania, spite or hatred, and financial gain. He thought

financial gain to be the most likely motivation for the Robinson fire. He admitted that an arsonist will usually receive financial gain only when there is insurance. He asserted that an arsonist seeking financial gain often removes valuable items from the property to be burned, or substitutes less valuable items. At the conclusion of all this (and more) he was asked:

> And if indeed financial gain is your motive, wouldn't you want to set a fire that's going to consume as much of your property as possible, as completely as possible?
>
> * * *
>
> Isn't it also correct that people who start fires for financial gains have recently purchased insurance against the proposed loss?

Objections to both questions were sustained on the grounds that they were argumentative and overbroad. We perceive no reversible error here. The second question was also repetitious.

4. Witness Bias

Defense counsel ascertained that fire investigators place [Opinion Page 12 (formerly A-7)] the cause of a fire in one of three categories: incendiary; accidental/natural; or undetermined. He then asked Kittel two questions, each suggesting tht Kittle tried to "minimize" the number of fires he classified as "undetermined" and tried to "maximize" the number classified as "incendiary." This, Robinson says, was supposed to lay a basis for showing bias by Kittel, because of his assumed proclivity for classifying fires as "incendiary," a proclivity asserted to arise from the notion that success as a fire investigator is equated to identifying a large number of fires as "incendiary."

Kittel had already testified that in a substantial number of fires, the cause is undetermined. There is no suggestion in the record that his job performance was rated acccording to the number of incendiary fires he identified, or that there was some sort of quota in this regard. Thus, it is doubtful that a proper foundation for these questions had been laid. Even more significant, however, is the fact that Kittel actually answered the questions. After the objection to the first one had been sustained, another question was asked, but the court and Kittel went on discussing the "minimization" issue:

> THE COURT: As I understand this question, do you have a preference? Do you try to put all fires in the category that are caused by arson or do you put fires into the category that are caused accidentally or naturally by

> lightning or something like that?
> A. [By Kittel]: Well, try to put something -- I don't like the wording there. We go out and try to determine what happened and [Opinion Page 13 (formerly A-8)] when we determine what happens, then it is put in a category, either accidental or incendiary or whatever.

In short, defense counsel got an answer to his question, although it was not the one he wanted. When he asked essentially the same question the second time, the objection was properly sustained, because the question had already been answered.

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CONVICTION UNDER ART. 27, SEC. 9 REVERSED. CONVICTION UNDER ART. 27, SEC. 6 AFFIRMED. COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE-HALF BY WASHINGTON COUNTY.

Formerly A-10)

IN THE COURT OF APPEALS OF MARYLAND

FREDRICA ANN ROBINSON

v.

STATE OF MARYLAND

PETITION DOCKET NO. 540
SEPTEMBER TERM, 1983
(No. 90, September Term, 1983
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above-entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: January 11, 1984

END OF DOCKET